

Sir *Lyon Pilkington*, Barronet,
APPELLANT.



Mary Cutbertson, Widow,
RESPONDENT.

The Respondent's CASE.

LENOX SMITH, Widow and Relict of *George Smith* Esq; and Daughter and Heir of *Cuthbert Harrison* Esq; being seised in Fee of the Mannor or Lordship of *Acafter Selby*, and other Lands in the County of the City of *York*, of the Value of 1000*l.* per Annum, and possess'd of a personal Estate of the value of 2000*l.* about the Month of *March* 1698, intermarried with Sir *Lyon Pilkington*, but before such Marriage,

By Indenture Tripartite, she did grant to Trustees and their Heirs, the said Mannor and Lands to 18 *March* 1698, the Use of her self for Life, with Remainder to the Issue of the intended Marriage, Remainder to the Survivor of them the said Sir *Lyon Pilkington*, and *Lenox* in Fee.

It is thereby covenanted and agreed, that the said *Lenox* shou'd convert and take to her own Use, all and every, or any of the Rents, Issues, and Profits of the Premises, from and after the Marriage, during her Life, at her own Will and Pleasure; and might take and dispose the Rents and Profits of a Copyhold Estate at *Hemingbrough*, in the County of *York*, and all her personal Estate to such Uses and Intents as to her might seem fitting; and Sir *Lyon*, during her Life, was not to intermeddle therewith; and in Case she survived Sir *Lyon*, she was not to claim any Dower out of his Estate.

Cuthbert Harrison Esq; Father of the said Dame *Lenox* dyed.

By Indenture a Fine is covenanted to be levied of the said Mannor and Premises, to the same Uses as are in the last mentioned Indenture. April 1699.
20 July 1699.

The said Fine was levied accordingly.

The said Sir *Lyon Pilkington*, having thereby secured to himself his said Wife's Inheritance, of such great Value as aforesaid, in Case he shou'd happen to survive her, soon after took occasion to leave her, and live sepearte from her for near Eight Years, and till the time of her Death, and seldom or never came near her, but when he wanted to get Money from her, or to prevail with her to pay his Debts.

That notwithstanding this unkind Usage, the said Dame *Lenox* voluntarily allowed Sir *Lyon* 300*l.* per Annum out of her own Rents, and maintained herself and Servants out of her own sepearte Estate; and the said Sir *Lyon* was never put to one farthing Charge upon her Account; but on the contrary, was Maintained and Supported by her, after such ill Treatment and Neglect as aforesaid.

The said Dame *Lenox*, in order to dispose of her sepearte personal Estate, which she had saved in about eight Years time, and which amounted only to about 500*l.* in Money, besides her dressing Plate, Wearing Apparel, Necklace, Ear-Pendants, some Household and other Goods, not exceeding in the whole 500*l.* more, pursuant to the Power to her reserved by the two before-mentioned Indentures of the 18th of *March* 1698, and 20th of *July* 1699, by her Deed of Gift, did give and grant to the Respondent all and singular her Goods, Chattles, and personal Estate. 11 July 1706.

The Respondent by her Deed-Poll, did declare that the said Deed of Gift was only made in Trust for the Benefit of such Person and Persons; and that the said Personal Estate should be distributed in such manner and proportion as the said Dame *Lenox Pilkington* shou'd appoint, by writing under her Hand, attested by two or more credible Witnesses. 11 July 1706.

The said Dame *Lenox Pilkington*, by her Deed of Appointment, attested by three credible Witnesses, reciteing the said Deed of Gift and Declaration of Trust, did direct and appoint a Distribution of her personal Estate, to be made to several of her Friends and Acquaintance in such manner as is therein particularly mentioned; and gives to the Charity School Girls in *St. Mary's-Gate York*, thirty Pounds for a Fund for them: To the Poor of *Hemingbrough-Parish* ten Pounds: To the Poor of *St. Martins Parish* in *Conny-Street York* five Pounds, and directs that if her personal Estate falls short to make up the Charities, proportionable Abatements should be made in them; and if there happen any Surplusage, the same shall be apply'd to augment the Charities. 11 July 1706.

Dame *Lenox Pilkington* dyed.

Sir *Lyon Pilkington* exhibits his Bill in *Chancery*, against the Respondent for an Account of the Personal Estate in the Possession of the said Dame *Lenox* at the time of her Death, which had since come to the Hands of the Respondent, to which Bill the Respondent put in her Answer, and exhibited a cross Bill against Sir *Lyon*, to have the Trust reposed in her by the said Dame *Lenox* to be Executed: And both the Causes coming to be heard before the late Lord Chancellor, 17 July 1706.
10 Oct. 1706.

The Court (*inter alia*) declared that the Personal Estate of the said Lady *Pilkington*, which was her own at the time of her Intermarriage with Sir *Lyon* with the produce thereof, was and ought to be deem'd and taken as part of her sepearte Personal Estate at her own Disposol. But that the Personal Estate of Mr. *Cuthbert Harrison* her late Father, which accru'd to her after her Marriage with Sir *Lyon*, ought not to be taken as part of her sepearte Personal Estate, or within her Disposol, but did belong to Sir *Lyon*; and that in Case she had disposed of her said Father's Personal Estate, so accruing to her after her Marriage with Sir *Lyon*, that the same ought to be made good to Sir *Lyon* out of the surplus of her own sepearte Personal Estate, before such surplus should be applied to the encrease of the Charities; and the Court did establish the disposition made by the said Lady *Pilkington* of her own sepearte Personal Estate, as also the said Charities; and it was referred to a Master to take the Account, and Certify any Matter of Doubt or Difficulty specially to the Court, and to Tax the Respondent her Costs. 9 Feb. 1707.
Decree.

That the Master took the said Account, to which Exceptions were taken by both sides, and the same have been argued, determined, and acquiesced in; But the Master certifying specially that he found by the deposition of the Defendant Mrs. *Bantry*, that *Cuthbert Harrison* Esq; about six Months before his Death came from *Acafter* to *Table at York*, and brought with him a large leather Portmantle, wherein was a very considerable Sum of Money, which Portmantle the said Mr. *Harrison* left with the Defendant *Bantry* for several Months, until about a fortnight before his Death, when he ordered the said Portmantle to be taken from her, and carried the same with him to *Acafter*, and about Ten days after Mr. *Harrison* dyed; and about six days after his Death, Dame *Lenox Pilkington* deceased came to the said Mrs. *Bantry*'s House, and brought with her the said Portmantle, and gave Mrs. *Bantry* the Key thereof, and order'd her to tell over the Money her Father *Harrison* had left therein, and upon counting the same, found 1100*l.* in Silver, and 370 odd Guineas in Gold, which the said Dame *Lenox* took into her own Custody, and some short time after gave Sir *Lyon Pilkington* only 500*l.* and kept to her own use the remainder of the said Money and Gold, and with part thereof paid several Debts which she owed before her Marriage with Sir *Lyon* amounting to 460*l.* 16*s.* 6*d.* 26 May 1709.
Masters Report.

9 Nov. 1709.
3 May 1710.

12 Aug. 1710.

19 Jan. 1710.

Note.

Note.

That upon arguing the special Matter of the said Report, and by a subsequent Order upon rearguing the same; It was order'd that the said Sir *Lyon Pilkington* should be examined upon Interrogatories for discovery of what of the Money in the Portmantle, over and above the said 500*l.* was concealed from him, and did not come to his Hands or Use; and also what of the Money found in the Portmantle, was paid for the Debts of the said Lady *Pilkington* before Marriage, above the said 460*l.* 16*s.* 6*d.*

Sir *Lyon* upon his Examination said, that he did not know, nor never heard of any Money that was left by *Cuthbert Harrison* Esq; in the Portmantle in Mrs. *Pantry's* Deposition mentioned, untill the same was discovered by the said Deposition, or some small time before.

The special matter of the said Report coming on to be further heard before the Right Honourable the Lord Keeper, It is ordered, that the surplus of the said 1100*l.* and 370 odd Guineas above the said 500*l.* and the said 460*l.* 16*s.* 6*d.* be made good to the said Sir *Lyon*, according to the Decree.

Sir *Lyon* hath appealed from the Decree and last mention'd Order for that, as he avers he is in the Nature of a Creditor of the said Dame *Lenox's* seperate Estate, for the Money in the Portmantle supposed to be concealed from him; and that the same ought to have been decreed to be made good to him as such, and before any voluntary Dispositions of the said Dame *Lenox* should take place.

The Lady *Pilkington's* whole seperate personal Estate at her Death did not exceed 1000*l.* out of which the Respondent paid for the Funeral Charges, and Debts of the said Lady *Pilkington* (which Sir *Lyon* by Law was liable to pay) 292*l.* 14*s.* 11*d.*

That Sir *Lyon* hath been for adversary in his Proceedings, that he hath occasioned the Respondent necessarily to expend for the Charge of these Suites 500*l.* at the least, and She by the Decree is to have her Costs in the first place out of the seperate Estate of the Lady *Pilkington*.

The Respondent is 60*l.* out of Pocket for keeping two Coach-horses, given by the Lady *Pilkington* by her Deed of Appointment to her Cousin *Lowther*, Sir *Lyon* opposing the said Gift, which charge the Court of Chancery would not allow to the Respondent, so that the Respondent will thereby, and by what her Costs when taxed will fall short of what she is out of Pocket upon that Score, be a very great Loser by taking upon her the Burden of this Trust.

The Respondent insists that the late Lord Chancellor's Decree in postponing the Appellants demand to the Gifts, Dispositions and Charities of the Lady *Pilkington* is well founded upon the Defendants Answer in Chancery to the Respondents Bill: Whereby he admits, that the said Mr. *Harrison* left a personal Estate of the value of 1500*l.* or thereabouts, and that he had only 500*l.* thereof, but says he did leave the Management and disposal of the said Mr. *Harrison's* personal Estate to his Wife the Lady *Pilkington* without any Contradiction of his: And the said Decree having also been so long acquiesced in and proceeded upon by Sir *Lyon Pilkington* the Respondent hopes the same shall not be reversed.

If the Decree should be reversed all the Gifts, Dispositions and Charities of the Lady *Pilkington* (who was so great a Fortune to Sir *Lyon*) will be disappointed, and Sir *Lyon* will not benefit above 200*l.* by it, and besides his Ladys old Cloaths must contribute to make up that Sum.

Wherefore the Respondent humbly hopes That this Honourable House will affirm the Decree, and that the Appellants Petition and Appeal shall be dismissed with Costs.

J. Jekyll,
R. Belasyse.

Sir *Lyon Pilkington*, Barr. }
Appellant. } } Mary Cuthbertson,
Respondent. }
The Respondents CASE.
To be heard at the Bar of the House of
Lords, on Friday the 11th. of May 1711.